

REMARKS

I. Status of the Claims

Claims 1-4, 6-17, 78, 80-83 and 85 were previously pending in the current application. Claims 1, 3, 6, 8, 10-12, 78, 80 and 81 stand rejected under 35 U.S.C. § 102 as being anticipated by San Diego Real Estate Library ("REL"). Claims 2, 4 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over REL in view of U.S. Patent No. 6,684,196 to Mini et al. Claims 9 and 13-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over REL. Claims 82 and 85 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over REL in view of Applicant admitted prior art. Claim 1 is independent. By the instant amendment, Claims 1, 2, 6-10, 14, 81-82 and 85 are amended. No new matter has been added. Favorable reconsideration of the application is respectfully requested in light of the foregoing amendments and the following remarks.

For the ease of the Examiner's review, a clean version of amended claim 1 follows:

1. A method for a real estate agent to obtain a real estate listing for a property of a seller, the method comprising:

the real estate agent receiving from the seller the real estate listing for the property in return for providing an up-front monetary payment to the seller;

the real estate agent providing the up-front monetary payment to the seller at the time the real estate agent receives the listing from the seller, and wherein the seller retains the up-front monetary payment received from the real estate agent if a sale condition for the property is not met during a defined period of time; and

the real estate agent receiving consideration from the seller if the sale condition is met during the defined period of time.

II. Summary of Examiner Interview

Applicant thanks the Examiner and Supervisor Weiss for the courtesies extended during the telephonic interview conducted on February 22, 2007 in which the Examiner, Supervisor Weiss and Applicant's representatives discussed REL. In discussing REL, the Examiner and Supervisor Weiss suggested that Applicant amend the claims to make clear that the up-front payment is monetary and to clarify the claims to more succinctly define the points of novelty.

III. The Rejection Under 35 U.S.C. § 102(a)

Claims 1, 3, 6, 8, 10-12, 78, 80 and 81 stand rejected under 35 U.S.C. § 102 as being anticipated by REL. Applicant respectfully traverses this rejection, and submits the following arguments in support thereof.

A. REL fails to teach or suggest an "Up-Front Monetary Payment"

Claim 1 recites "the real estate agent receiving from the seller the real estate listing for the property in return for providing an up-front monetary payment to the seller; the real estate agent providing the up-front monetary payment to the seller, at the time the real estate agent receives the listing from the seller ...". (Emphasis added). In REL there is no such up-front monetary payment provided by to the seller at the time the real estate agent receives the listing from the seller.

REL specifically teaches away from giving a monetary up-front payment by saying that the seller receives a post-dated check. Even if the post-dated check could be considered up-front consideration, it is clearly not a "monetary up-front payment" provided at

the time the real estate agent receives the listing from the seller. Rather the REL payment is provided at least sixty days later, at the time the charity cashes the check. Furthermore, the REL check is not a payment to the Seller, as required by the claims, but rather a payment to charity, and payment to one entity – the charity – does not render obvious a payment to another entity – the seller.

Additionally, claim 1 clearly states “wherein the seller retains the up-front monetary payment received from the real-estate agent.” Since in REL, the seller never actually receives any payment at the time of giving the listing, but rather only receives a piece of paper that has no monetary value until the date of the post-dated check comes to pass, there is nothing of value for the seller to retain. Thus, Applicant respectfully submits that REL fails to teach or suggest the monetary up-front payment limitation and therefore, that the claims are neither anticipated nor rendered obvious by the art of record.

B. In the claims the seller’s right to retain the monetary up-front payment is conditioned upon the sale condition not being met

Claim 1 recites that the seller’s retention of the monetary up-front payment is conditioned on a sale condition not being met. There exists a condition, and whether the seller retains the up-front payment is based on whether the condition is or is not met. For example, in an illustrative embodiment, the sale condition is the sale of the property. In such an example, if the house is not sold by the agent, then the seller can keep the up-front payment. In this regard, claim 1 recites:

wherein the seller retains the up-front monetary payment received from the real estate agent if a sale condition for the property is not met during a defined period of time.

(emphasis added).

In contrast, REL specifically states on page 8 that the realtor “is out \$500 cold hard cash in 60 days, whether I ever sell your house or not.” (emphasis added) In fact, REL specifically states on the same page that the uniqueness of the described arrangement is that the payment to the seller “isn’t tied to the sale of your house.” REL further distinguishes its arrangement is different than others because REL has no condition. As REL says on page 8:

Every other guarantee I’ve seen says that the agent will pay you at the close of escrow, meaning that if the house never sells, the agent isn’t out anything.

With the guarantee described in REL, the seller gets the money even if the seller is not in escrow at the end of 60 days; payment is not conditioned on whether the seller is in escrow. Being in escrow is not a sale condition upon which retention of the up-front payment is conditioned.

Therefore, in REL, the \$500 goes to the charity regardless of any sale conditions. There is no sale condition associated with the seller’s retaining at least a portion of the monetary up-front payment. Accordingly, Applicant respectfully submits that REL fails to teach or suggest this limitation and that the claims are in condition for allowance.

C. In the claims, the Same Sale Condition is the basis for the real estate agent receiving consideration

Claim 1 also recites that the consideration received by the agent from the seller is conditioned upon the sale condition being met. Taken with the limitation regarding the seller’s retention of the monetary up-front payment, it is clear that the same sale condition triggers the consideration to the agent and the retention of the monetary up-front payment by the seller. In this regard the claim recites:

wherein the seller retains the monetary up-front payment received from the real estate agent if a sale condition for the property is not met during a defined period of time

the real estate agent receiving consideration from the seller if the sale condition is met during the defined period of time.

(emphasis added).

In the rejection the Examiner has pointed to the real estate agent's commission as the consideration to the real estate agent. As part of such argument, the sale condition would be the sale of the property. To meet the claim limitations, that same sale condition must be the basis for triggering the seller's retaining the monetary up-front payment; however, in REL this is not the case.

The Examiner has stated that the post-dated check acts as the up-front payment. As discussed above, there is no condition on the post-dated check. In REL, the realtor states he "is out \$500 cold hard cash in 60 days, whether I ever sell your house or not." (emphasis added). There is no sale condition. Furthermore, if the post-dated check is not conditioned on the sale of the house, then the same sale condition does not trigger the agent receiving the second consideration and the seller retaining the up-front payment. In REL, there is no one sale condition that triggers both the receipt of the consideration by the agent from the seller and the seller's retaining of the monetary up-front payment.

The Examiner has pointed to the fact that "customer can cash the check given to customer at time of listing" as indicating that a sale condition applies to the seller's right to retain the up-front payment. Firstly, since the check is post-dated, the customer cannot cash the check at the time of listing. The characterization of REL is incorrect. Secondly, Applicant respectfully submits that REL does not teach or suggest conditioning the seller's retaining of the up-front payment on any sale condition. As discussed above, the charity cashes the check after 60 days,

whether or not the agent ever sells the house. REL emphasizes that all other incentive programs involve payment to the seller only at the close of escrow.

Accordingly, Applicant respectfully submits that the claimed invention is neither anticipated nor rendered obvious by REL for this additional reason.

IV. The Rejection Under 35 U.S.C. § 103(a)

Claims 2, 4 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over REL in view of U.S. Patent No. 6,684,196 to Mini et al. Claims 9 and 13-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over REL. Claims 82 and 85 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over REL in view of Applicant admitted prior art. As discussed above, REL fails to disclose each and every element of independent claim 1. Since claims 2, 4, 7, 9, 13-17, 82 and 85 each depend from claim 1, Applicant submits that the rejections under 35 U.S.C. § 103(a) should be similarly withdrawn.

CONCLUSION

Applicant respectfully submits that all outstanding rejections have been addressed and are now overcome. Applicant further submits that all of the claims now pending are patentable over the prior art and in condition for allowance. Accordingly, Applicant respectfully requests reconsideration of the present application, in view of the amendments and remarks provided herein.

Aside from the fees connected with the Request for Continued Examination no fees or charges are believed due in connection with this amendment. Nevertheless, the Commissioner is authorized to charge any fees which may now or hereafter be due in this application to Deposit Account No. 19-4709.

Respectfully submitted,

/Ian G. DiBernardo/

Ian G. DiBernardo
Registration No. 40,991
Attorney For Applicants
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038-4982
(212) 806-5400